

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

POLARIS IP, LLC

v.

GOOGLE, INC., et al.

No. 2:07-cv-00371-TJW-CE

JURY

**PLAINTIFF'S SUR-REPLY REGARDING AOL'S MOTION TO DISMISS, MOTION
FOR MORE DEFINITE STATEMENT, MOTION TO STRIKE
AND MOTION TO STAY DISCOVERY**

Plaintiff, Polaris IP, LLC (“Polaris IP”), files this Sur-Reply to the Reply (Dkt. No. 60) of Defendants America Online, Inc. and AOL LLC (collectively “AOL”) regarding AOL’s Motion to Dismiss, or in the Alternative, for a More Definite Statement, Motion to Strike and Motion to Stay Discovery (Dkt. No. 43), as follows:

I.

AOL’s Reply “incorporates by reference” Google’s Reply (Dkt. No. 59) regarding the same issues. Accordingly, Polaris IP hereby incorporates its Sur-Reply to Google’s Reply, which is being filed concurrently herewith.

II.

In addition, AOL’s Reply states that Polaris IP’s Response merely incorporated its Response to Google’s Motion, and thus “leaves unanswered the arguments presented on page 2 of AOL’s Motion.” The reason that Polaris IP incorporated its Response to Google’s Motion is that AOL’s Motion appeared to merely incorporate Google’s, and it merely requested relief “for the reasons set forth” in Google’s Motion. As stated in Polaris IP’s Response,

AOL’s Motion provides no independent analysis and relies solely upon the grounds set forth in Google’s Motion. Accordingly, rather than burden the court with repetitiveness, Polaris IP incorporates herein its Response to Google’s Motion.

Irrespective of the foregoing, although it is not clear that AOL is making any argument in addition to those of Google, Polaris IP will now address what AOL complains is unanswered.

AOL argues that it “does not offer any services relating to automated email messaging systems in the customer relationship management field -- the subject matter of the '947 patent.” This is similar, if not identical, to Google’s erroneous arguments that Polaris IP has refuted. Simply put, the '947 patent is not limited to automated email messaging systems or the customer relationship management field. Rather, multiple claims of the patent cover the processing of noninteractive messages, such as those utilized by www.aol.com, using rule base and case base knowledge engines. For example, claim 26 covers the following:

26. A method for automatically processing a non-interactive electronic message using a computer, comprising the steps of:
 - (a) receiving the electronic message from a source;
 - (b) interpreting the electronic message using a rule base and case base knowledge engine; and
 - (c) retrieving one or more predetermined responses corresponding to the interpretation of the electronic message from a repository for automatic delivery to the source.

AOL’s Reply alleges that AOL has “hundreds of product offerings.” Polaris IP is not aware of AOL’s “hundreds of product offerings,” nor has Polaris IP accused “hundreds” of AOL products of infringement. Rather, Polaris IP has accused functionality present at www.aol.com of infringement, specifically relative to its use of rule base and case base knowledge engines. Polaris IP need not accuse any “product” more specific than www.aol.com of infringement because Polaris IP is not aware of any infringing AOL product other than functionality present at www.aol.com.

AOL complains that Polaris IP has merely accused AOL’s “web address” of

infringement, but the functionality of www.aol.com is what infringes. Polaris IP should not be blamed, nor its Complaint deemed insufficient, merely because Polaris IP has named the accused instrumentality as it is named.

Accordingly, for at least the reasons noted above, and in Polaris IP's Response and Reply relative to Google, AOL has presented no grounds for relief and its Motion should be denied. Polaris IP also requests such other relief to which it may be entitled.

Date: November 23, 2007.

Respectfully submitted,

POLARIS IP, LLC

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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served today with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

Dated: November 23, 2007

/s/ John J. Edmonds
John J. Edmonds